IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.864 OF 2006

Popat Shankar Botkar .. Appellant.

Versus

Shankar Pandurang Salunke & Ors. .. Respondents.

Shri.Navin B. Shah for the appellant.

Shri.V.S.Talkute for respondent No.1.

CORAM : D.B.BHOSALE, J.

DATE : 26TH FEBRUARY, 2007.

P.C.:

1. Heard the learned counsel for the parties.

2. The concurrent judgements of the courts below, decreeing the suit filed by the plaintiff-respondent No.1 for possession of the suit properties on title are under challenge in the instant appeal.

3. Shri.Shah, learned counsel for the

appellant-defendant No.3 submits that the courts below have failed to appreciate the case pleaded by the defendants that the property sold by Madhukar to the respondent-plaintiff was joint family property and Madhukar had no authority to sell it and since no issue to that effect was framed, the appellant-defendants did not get proper opportunity to lead evidence in that regard. I perused both the judgements. It is clear from the observations made in the impugned judgements that all these issues were raised and considered by the courts below and more particularly in paragraph Nos.8 to 12 and 14 in the judgement of the appeal court. Looking to the observations made in paragraph Nos.11 and 14, it cannot be said that the property sold to the plaintiff was joint family property and Madhukar had no right to transfer it to the plaintiff. That apart, it cannot be overlooked, at no point of time, the appellant claimed partition of the joint family properties or declaration that the sale deed executed by Madhukar is not binding on him. The grievance, the appellant did not get an opportunity to lead evidence also deserves to be rejected since it is clearly reflected in the judgement that all these contentions were allowed to be raised and considered by the courts below. Keeping that in view and considering that there are concurrent findings of fact recorded by the

courts below and as I find sufficient material on record to sustain those findings and considering extremely limited jurisdiction of this court to disturb the findings of fact, this appeal fails and dismissed as such.

4. At this stage, Shri.Shah, learned counsel for the appellant seeks time to vacate the suit premises. Shri.Talkute, learned counsel for the respondent has no objection for granting some reasonable time subject to filing of an usual undertaking in this court. Considering the submissions of the learned counsel, I pass the following order. The appellants shall vacate the suit premises within six months from today subject to their filing of the usual undertaking in this court within four weeks from today, failing which it shall be open for the plaintiff to execute the decree.

(D.B.BHOSALE, J.)